

REMARKS

Applicants' attorney would like to thank the Examiner for the telephone interview. In the summary of the interview, the Examiner notes that Applicants argued that the claimed channel tapered in width and not in depth of channel. Applicants did not intend to state that the claimed channel did not taper in depth of channel. Applicants' attorney apologizes for this misstatement or misunderstanding.

The Examiner objects to the previous amendment under 35 U.S.C. 132 because it introduces new matter into the disclosure of the invention.

Specifically, the Examiner states that on page 4, line, 8, the addition of a "ribbon" being cut away is new matter unsupported by the original disclosure. Applicants would like to point to page 5, lines 1 - 2 of the original disclosure that describes a channel that "guides the product so that it rolls around itself in the channel." Applicants suggest that in order for a layer of food product to roll around itself, the thickness of the layer would be relatively thin. Therefore, describing the layer as a ribbon would be supported. However, Applicants have deleted "ribbon" from the specification to put the application in better condition for allowance.

Next, the Examiner states that on page 4, line 17 the deletion of "and forms it into the desired shape and size for the serving" is considered to be new matter in that it changes the content and meaning of the original disclosure. Applicants would like to point out that the frozen food product rolls around itself in the channel as it moves towards the collection compartment. When the food product reaches the end of the channel or collection compartment, it has rolled around itself in a channel with a semi-circular cross section, and therefore, is generally at least round, if not spherical, in shape. Because the food product enters the collection component in a generally round shape, any forming or shaping done by the collection component is more

cosmetic than functional. Applicants disagree that the content and meaning of the original disclosure is changed, but have inserted the aforementioned phrase back in the specification to place the application in better condition for allowance.

Next, the Examiner states that on page 5, lines 6 - 9, the deletion of the serving portions being controlled by "the size of the channel in the scoop" and "the forming and dispensing means" is considered to be new matter in that it changes the content and meaning of the original specification. Applicants have inserted the aforementioned phrases back in the specification to place the application in better condition for allowance.

The Examiner states that on page 7, lines 12 - 13, the addition of the product emerging through the opening of the scoop "in a generally spherical shape" is new matter unsupported by the original disclosure. Applicants would like to direct the Examiner's attention to claim 7, lines 5 - 6 of the original disclosure which describes a "central enlarged spherical portion adjacent the opening". Applicants believe the product emerging "in a generally spherical shape" is supported in the original disclosure, but have changed the text to reference the spherical shape of the collection compartment rather than the spherical shape of the fool product in order to place the application in better condition for allowance.

Finally, the Examiner states that on page 11, lines 20 - 21, the deletion of "the cross-sectional area of the channel, the forming and dispensing means" as factors in controlling the amount of product dispensed, is considered to be new matter in that it changes the content and meaning of the original disclosure. Applicants have inserted the aforementioned phrase in the specification to place the application in better condition for allowance.

The Examiner rejects claims 14 - 35 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Specifically, the Examiner states that in claim

14, lines 9 - 10, the product "rolled back on itself into a spherical shape" lacks support in the original disclosure. Applicants point to page 5, lines 1 - 2 of the original disclosure which describes a channel that "guides the product so that it rolls around itself in the channel." If the product rolls around itself in a channel with a semi-circular cross section, the end result, if not spherical, could at least be described as round. Applicants have amended the claim to more clearly describe the product movement. The amended claim eliminates the spherical shape language and describes the movement as "to roll the thickness of frozen food product around itself". Also in claim 14, lines 13 - 14, the Examiner states the collection compartment having "at least a partially closed portion directed towards said first side of said removal portion" lacks support in the original disclosure. Applicants direct the Examiner's attention to Figure 1 to find support for this feature in the original disclosure. The first end portion 28 shows a partially closed portion directed towards the first side of said removal portion. Figs. 3 and 4 also show the partially closed portion of the apparatus. Applicants have added the description of this feature in the detailed description of Fig. 1.

In claim 15, lines 3 - 5, Examiner states the collection component "having a shape generally conformable to said interior wall of said collection compartment" and "positionable during its operation to generally abut at least a portion of said interior wall" both lack support in the original disclosure. Claim 7, line 5 of the original disclosure claims "a central enlarged spherical portion adjacent the opening" at one end of the channel. Figures 3 and 4 show a semi-spherical collection component that is rotated to fit inside that spherical opening of the collection compartment. In Figure 3, the open end of the collection component 34 is shown adjacent the collection compartment 32. Figure 4 shows the collection component 34 in a position inside the collection compartment 32. Figure 3 shows that the collection component 34

is shaped to conform to the interior wall of the collection compartment 32, and Figure 4 shows the collection component 34 in a position to abut at least a portion of the interior wall of the collection compartment 32. Claim 7 of the original disclosure along with Figs. 3 and 4 show the collection component 34 conforming to said interior wall of said collection compartment and positioned during its operation to abut at least a portion of said interior wall. Also in claim 15, line 10, the Examiner states that the operator actuatable assembly being "responsive to operator input" lacks support in the original disclosure. Applicants again direct the Examiner's attention to Figures 3 and 4 to find support for this feature in the original disclosure. Figures 3 and 4 show handles 42 and 44 connected to bar members 36 and 38 that are used by an operator to change the position of the collection component 34 within the collection compartment 32. In addition, the original disclosure, at page 6, lines 5 - 7 states the "operator can rotate either bar member 36 or 38 thereby rotating an edge of the cup 34 through the product". Additionally, Applicants have replaced the words "and responsive to operator input to effect operation of said dispensing portion" with the word "operable" in claim 15 lines 10 - 11 in order to put the application in better condition for allowance.

In claim 16, the Examiner states that the retrieval arm being "spirally shaped" lacks support in the original disclosure because the arm is disclosed as being "curved" in the original disclosure. At page 3, line 21, the channel is described as "curved". At page 5, line 5, the channel is described as "tapered". Applicants have replaced the words "spirally shaped" with the words "curved and tapered" in the claim to place the claim in better condition for allowance.

In claim 19, the Examiner states that the collection component including "a flexible member connected along at least a portion of its periphery to said interior wall of said collection compartment to abut said interior wall when in a static condition" lacks support in the original

disclosure. Without acknowledging that any new matter was added, applicants would like to cancel claim 19 to put the application in better condition for allowance.

In claim 23, the Examiner states that the leading edge being "a knife shaped edge" lacks support in the original disclosure. Applicants have replaced the word "leading" with "trailing" as it should have originally been written. On page 9, line 5 of the original disclosure, the trailing edge is described as a cutting edge. Applicants have also replaced "knife shaped" with "tapered cutting" to place the application in better condition for allowance.

In claim 30, line 4, the Examiner states that "extend generally spirally" lacks support in the original disclosure. Applicants have replaced the word "spirally" with "curvilinearly" which is supported by Figure 1 and page 5, lines 10 - 11 when it states that the channel is "curved" along its length. Also in claim 30, lines 13 - 14, the Examiner states the collection compartment including "a closed side adjacent the terminus of said trailing edge" lacks support in the original disclosure. Applicants direct the Examiner's attention to Figure 1 which shows a partially closed side at the end of the trailing edge. Applicants have inserted the words "an at least partially" before the word closed in the claim. Also in claim 30, line 16, the Examiner states that the "interior of said collection compartment having a generally spherical shape" lacks support in the original disclosure. Claim 7, line 5 of the original disclosure claims "a central enlarged spherical portion adjacent the opening" at one end of the channel. Figures 3 and 4 show a semi-spherical collection component that is rotated to fit inside that spherical opening or collection compartment. Claim 7 of the original disclosure along with Figs. 3 and 4 provide support for the "interior of said collection compartment having a generally spherical shape". Language describing the collection compartment's spherical shape has been added to the specification.

Also in claim 30, Applicants replace the word "thereinto" with the words "into said collection component" at line 14 for clarity.

In claim 32, lines 2 - 3, the Examiner points out that the movable portion being "sized and configured to be brought into close abutment with at least a portion of said interior wall of said collection compartment" and lines 6 - 7 "into and away from close abutment with at least a portion of said interior wall of said collection compartment" both lack support in the original disclosure. Claim 7, line 5 of the original disclosure claims "a central enlarged spherical portion adjacent the opening" at one end of the channel. Figures 3 and 4 show a semi-spherical collection component that is rotated to fit inside that spherical opening or collection compartment. In Figure 3, the open end of the collection component 34 is shown adjacent the collection compartment 32. Figure 4 shows the collection component 34 in a position inside the collection compartment 32. Figure 3 shows that the collection component 34 is shaped to conform to the interior wall of the collection compartment 32, and Figure 4 shows the collection component 34 in a position to abut at least a portion of the interior wall of the collection compartment 32. Claim 7 of the original disclosure along with Figs. 3 and 4 show the collection component is "sized and configured to be brought into close abutment with at least a portion of said interior wall of said collection compartment" that the collection component, upon use, is moved "into and away from close abutment with at least a portion of said interior wall of said collection compartment.

In claim 33, line 2 the Examiner states that "a disc-like portion sized and dimensioned to cover a substantial portion of the open end of the ice cream container" lacks support in the original disclosure. Page 2, lines 18 - 19 describe the assembly as "designed to be mounted on and adjacent to a container of food product and to extend substantially across one half of the

opening of the container". Applicants also direct the Examiner's attention to Figs. 7 and 8 which show the assembly mounted on the lid of the frozen food product. Page 10, line 5 - 6, describes these figures and mentions a lid containing the scoop member. In addition, at page 9, lines 20 - 22, the process of installing the assembly (in the lid) "with the container before it is distributed, and disposing of" the assembly after the product is gone is described.

In claim 35, the trailing edge having "a knife-like front edge" lacks support in the original disclosure. On page 9, line 5 of the original disclosure, the trailing edge is described as a cutting edge. Applicants have replaced the words "a knife-like front" with "an" to place the claim in better position for allowance.

The Examiner rejects claims 14 - 29 and 34 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

In claim 14, lines 14 - 15 the Examiner states that "having an interior wall" is indefinite as to which structural element is being referred to. In claim 14, line 14, Applicants have amended the claim to show a clear reference to the collection compartment.

In claim 15, lines 11 - 12, "said closed side of collection compartment" lacks proper antecedent basis in the claims. Applicants have added the words "at least partially" before the word "closed" and replaced the word "side" with "outer wall" after the word "closed" in claim 15 to agree with the antecedent basis provided in the claims.

In claim 19, the Examiner states that the structural relationship between the collection component and the "flexible member" is unclear and indefinite, such that the claim is incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. Applicants would like to cancel claim 19.

In claim 26, the Examiner points out that the claim should clarify that the channel being "generally semi-circular" refers to the cross-sectional shape of the channel. Applicants amended claim 26 in accordance with the Examiner's direction.

The Examiner points out that claims 28 and 29 should depend from claim 15 in order to provide the proper antecedent basis for "said dispensing portion" and said collection component". Applicants amended claims 28 and 29 to depend from claim 15 in accordance with the Examiner's direction.

In claim 34, line 3 - 4, the Examiner points out that "said retrieving portion" lacks proper antecedent basis and should apparently be changed to "said removal portion". Applicants have amended claim 34 to replace the word "retrieving" with "removal".

A few other corrections were made in the specification to correct obvious errors.

The Examiner rejects claim 1 - 7 and 9 - 13. Applicants intended to cancel originally numbered claims for the parent application in the last communication with the Examiner. Applicants hereby confirm their cancellation of claims 1 - 7 and 9 - 13 by this amendment.

The Examiner rejects renumbered claim 14 - 17, 20, 22 - 26, and 30 - 35 presented and misnumbered as 1 - 4, 7, 9 - 13, and 17 - 22 in the RCE amendment filing under 35 U.S.C. 102(b) as being anticipated by Whiteside, U.S. Patent No. 1,638,134. The Whiteside device cannot anticipate the present invention. The Whiteside device does not have a channel designed to facilitate rolling of the ice cream as does the present invention. The Whiteside device has a scraper arm that pushes ice cream into a slot that extends along the length of the scraper arm as the device is turned. The housing on the second (upper) side of the Whiteside device receives the ice cream being pushed through the slot. As the device continues to turn, the pressure from later scraped ice cream compresses and pushes the earlier scraped ice cream through the housing on the second (upper) side towards the opening at the center of the device on the second (upper) side. In contrast, the present invention shaves a layer of ice cream into a channel with a leading and a trailing edge. As the present device continues to turn, the layer of ice cream follows the contour of the channel and rolls around on itself. The ice cream is not compressed or pushed through a slot. It is rolled and guided along a channel designed to cause the ice cream to roll as it follows the contour of the channel as it extends along the first (or lower) side of the removal portion. The slot of the Whiteside device lies essentially in two dimensions, while the channel of the Applicants' device is contoured to promote rolling in three dimensions as seen in Fig. 1. It is the three dimensional contour that causes the ice cream to roll as it moves along the channel. The slot in the Whiteside device can only push the ice cream up and towards the center in two dimensions. Because of the three dimensional contour of Applicants' device, the ice cream is scraped and rolled along the channel, not scraped and crowded along as in the Whiteside device.

The Examiner states that the Whiteside device has a "a spiral tapered channel 19 having a semi-circular C-shaped cross-section defined between the leading and trailing edges". The

Whiteside reference does not show a "tapered channel 19 having a semi-circular C-shaped cross-section defined between leading and trailing edges". At page 2, lines 5 - 13, the Whiteside patent reads "a slot 19" permits the upward passage of the film or shaving of ice cream into the space formed by the wall 19, and the slope of this wall directs the ice cream so ejected by the lip to flow or crowd toward the centre of the handing device C and emerge from the head 18". The Whiteside patent does not mention a channel; it only describes a slot 19" at page 2 line 5. This slot 19" is never described as having a semi-circular C-shaped cross section. At page 2, lines 8 - 9, the slot 19" is described as "the space formed by the wall 19", and at page 1, lines 102 - 103 as "a recess from its centre to the periphery at one side, with an inclined wall 19". The wall 19 is only described as "inclined" on page 1, lines 102 - 103, and as having a "slope" at page 2, line 8. The slope of the wall helps the ice cream crowd to the center of the Whiteside device and does not cause the ice cream to roll like the contour of the Applicants' channel. The slot 19" of the Whiteside device is not comparable to the channel of Applicants device because the Applicants' channel is contoured to promote rolling of the ice cream, and it has a semi-circular cross-section while the slot of the Whiteside device serves only to guide the scraped ice cream and crowd it towards the center.

The Examiner discusses the collection compartment of the Whiteside device as "having at least a partially closed portion directed towards the lower first side of the removal portion". The collection compartment of the Whiteside device is described at page 1, line 108 as the "cavity 19". (Whiteside uses the number 19 to refer to the wall *and* to the cavity formed at the center of the device. He uses 19' to describe the slope of the wall at the center of the device and 19" to describe the slot or path of the ice cream.). The incline of the wall 19' does not partially close the slot 19" on one side of the device. Figures II, III and V of the Whiteside patent show that the

cavity 19 is round in the center of the device with no partial closure. This cavity 19 is at the bottom of shank 17, and it is located on the second (upper) side of the Whiteside device. Page 2, lines 21 - 25 of the Whiteside reference state that the dipper is formed to engage the sloping surface 19' of the interior of the head or closure 18, but terminates adjacent the centre or axis so as not to interfere with the flow of ice cream. Any closed portion on the Whiteside device is attributed to the dipper, and specifically does not interfere with the flow of ice cream. The collection compartment of the Whiteside device is essentially the round portion at the end of the slot and at the bottom of the tubular shaped shank 17. Applicants' device uses a channel that contours to create a partially closed compartment near its end that causes the ice cream to roll and emerge through the second side of the compartment. Unlike the Whiteside device, the contour of the channel and the partial closure deliberately control the flow of ice cream in Applicants' device.

The Examiner rejects renumbered claims 18, 21, and 27 - 29 presented and misnumbered as claims 5, 8, and 14 - 16 in the RCE amendment filing under 35 U.S.C. 103(a) as being unpatentable over Whiteside U.S. Patent No. 1,836,134. Based on the aforementioned remarks, Applicants believe that the independent claims are patentable over the Whiteside reference, and no art shows or teaches changes in Whiteside to achieve the claims as set forth.

As directed by the Examiner, the claims in this application have been renumbered. Claim 14 is an independent claim directed to an assembly for dispensing frozen food product from a container. Claims 15 - 27 depend from claim 14; claims 28 - 29 depend from claim 15. Claim 30 is an independent claim. Claims 31, 32 and 35 depend from claim 30; claim 33 depends from 32 and claim 34 depends from claim 33.

Each of the named inventors contribute to the independent claims, and therefore he contributed to each dependent claim as well.

Applicants believe that all the claims of this application contain limitations which patentably distinguish them over the cited prior art and their allowance is hereby respectfully requested.

Authorization is hereby provided to charge any underpayment of fees or any additional fees due with respect hereto to our Deposit Account No. 08-1280.

Again, Applicants' attorney would like to thank the Examiner for the telephone interview.

Respectfully submitted,

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